


VI. ORDERING CLAUSES

70. Accordingly, IT IS ORDERED that pursuant to the authority contained in Sections 1, 4(i), 303(r), 308, 309, and 310 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 303, and 308, NOTICE IS HEREBY GIVEN of our intent to adopt the policies and rules set forth in this Notice and that COMMENT IS SOUGHT on all the proposals in this Notice.

71. IT IS FURTHER ORDERED that a copy of this Further Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, found in Appendix A, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION


William F. Caton
Acting Secretary

Appendix A

Initial Regulatory Flexibility Analysis

As required by the Regulatory Flexibility Act (RFA), *see* 5 U.S.C. § 603, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the expected significant economic impact on small entities by the policies proposed in this Further Notice of Proposed Rulemaking. A previous IRFA was prepared in May, 1996. Written and public comments are requested by this present IRFA and must be filed by the deadlines for comments on this Further Notice.

A. Need for and Objectives of this Further Notice of Proposed Rulemaking

This Further Notice of Proposed Rulemaking seeks additional comment on proposals to establish a framework to allow satellites licensed by other countries to provide service in the United States. Specifically, we propose to establish a presumption that no ECO-SAT analysis is required in evaluating whether to permit satellites licensed by WTO members to provide services covered by the U.S. schedule of commitments under the Agreement within the United States and between the United States and WTO Members. We propose to retain our proposed ECO-SAT test for non-WTO members, intergovernmental organizations, and services for which the United States has taken an exemption from most-favored-nation obligations under the Agreement. The Commission seeks to open U.S. markets to non-U.S.-licensed satellites in a manner consistent with our overriding goal of promoting a competitive satellite market in the United States.

B. Legal Basis

The proposed action is authorized under Titles I and III of the Communications Act of 1934, as amended, 47 U.S.C. Titles I, III.

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

The Commission has not developed a definition of small entities applicable to non-U.S.-licensed satellite services. Therefore, the appropriate definition of small entity is the definition under the Small Business Administration (SBA) rules applicable to Communications Services, Not Elsewhere Classified. This definition provides that a small entity is one with \$11.0 million or less in annual receipts. According to Census Bureau data, there are 848 firms that fall under the category of Communications Services, Not Elsewhere Classified. Of those, approximately 775 reported annual receipts of less than \$ 9,999 million, thus qualifying as small entities. The census report does not provide more precise data.

D. Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

The proposal under consideration in this Further Notice includes a new proposal proposing to permit non-U.S.-licensed satellites to participate in processing rounds by filing a letter of intent. The proposal also proposes to permit earth station applications independent of a processing round. The proposal also proposes to continue to exempt receive-only earth stations from obtaining a license.

E. Steps Taken to Minimize Any Significant Economic Burdens on Small Entities, and Significant Alternatives Considered

This Further Notice solicits comments on alternatives for permitting access by non-U.S.-licensed satellites to the U.S. market. This item should positively impact both large and small businesses by providing greater flexibility and applying the ECO-SAT test contained in the Notice only to non-WTO members, intergovernmental organizations and services for which the United States has taken an exemption from most-favored-nation obligations under the Agreement. Small business concerns, particularly those offering earth stations, will have a greater choice of competing satellites and satellite operators. We request comment on the alternatives described in the Further Notice, as well as on any other alternatives that would promote the goals of this proceeding while lessening the impact on small entities.

F. Federal Rules That May Overlap, Duplicate or Conflict With These Proposed Rules

None.

APPENDIX B

Proposed Rule Amendments to 47 C.F.R. Part 25 of the Commission's Rules

Part 25 of the Commission's Rules and Regulations (Chapter I of Title 47 of the Code of Federal Regulations) is proposed to be amended as follows:

1. The authority citation for Part 25 continues to read as follows:

Authority: Secs. 25.101 to 25.601 issued under Sec. 4, 48 Stat. 1066, as amended; 47 U.S.C. 154. Interpret or apply secs. 101-104, 76 Stat. 419-427; 47 U.S.C. 701-744; 47 U.S.C. 554.

PART 25-SATELLITE COMMUNICATIONS

2. The Table of Contents for Part 25 is amended to read as follows:

* * * * *

EARTH STATIONS

- 25.130 Filing requirements for transmitting earth stations.
- 25.131 Filing requirements for receive-only earth stations.
- 25.132 Verification of earth station antenna performance standards.
- 25.133 Period of construction; certification of commencement of operation.
- 25.134 Licensing Provisions of Very Small Aperture Terminal (VSAT) Networks.
- 25.135 Licensing provisions for earth station networks in the non-voice, non-geostationary mobile-satellite service.
- 25.136 Operating provisions for earth station networks in the 1.6/2.4 GHz mobile-satellite service.
- 25.137 Application requirements for earth stations operating with non-U.S. licensed space stations.

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3. Section 25.113 is amended by revising the first sentence of paragraph (b) to read as follows:

§ 25.113 Construction Permits

* * * * *

(b) Construction permits are not required for satellite earth stations that operate with U.S.-licensed or non-U.S. licensed space stations. * * *

* * * * *

4. Section 25.115 is amended by revising the first sentence of paragraph (c) to read as follows:

§ 25.115 Applications for earth station authorizations

* * * * *

(c) Large Networks of Small Antennas operating in the 12/14 GHz frequency bands with U.S.-licensed or non-U.S. licensed satellites for domestic services. * * *

* * * * *

5. Section 25.130 is amended by revising the first sentence of paragraph (d) to read as follows:

25.130 Filing requirements for transmitting earth stations

* * * * *

(d) Transmissions of signals or programming to non-U.S. licensed satellites, and to and/or from foreign points by means of U.S.-licensed fixed satellites may be subject to restrictions as a result of international agreements or treaties. * * *

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6. Section 25.131 is amended by revising paragraphs (b) and (j) to read as follows:

§ 25.131 Filing requirements for receive-only earth stations.

* * * * *

(b) Except as provided in paragraph (j) of this section, receive-only earth stations in the fixed-satellite service that operate with U.S.-licensed satellites may be registered with the Commission in order to protect them from interference from terrestrial microwave stations in bands shared co-equally with the fixed service in accordance with the procedures of §§ 25.203 and 25.251-25.256.

* * * * *

(j) Receive-only earth stations operating with non-U.S. licensed space stations shall file an FCC Form 312 requesting a license or modification to operate such station. This license will afford protection from interference from terrestrial microwave stations in bands shared co-equally with the fixed satellite service in accordance with the procedures of § 25.203 and §§ 25.251-25.256. Receive-only earth stations used to receive INTELNET I service from INTELSAT space stations need not file for licenses. See Deregulation of Receive-Only Satellite Earth Stations Operating with the INTELSAT Global Communications Satellite System, Declaratory Ruling, RM No. 4845, FCC 86-214 (released May 19, 1986).

7. Section 25.137 is added to read as follows:

§ 25.137 Application requirements for earth stations operating with non-U.S. licensed space stations

(a) Earth station applicants or entities filing a "letter of intent" requesting authority to operate with a non-U.S. licensed space station to serve the United States must attach an exhibit with their FCC Form 312 application with information demonstrating that U.S.-licensed satellite systems have effective competitive opportunities to provide analogous services in (1) the country in which the non-U.S. licensed space station is licensed; and (2) all countries in which communications with the U.S. earth station will originate or terminate. The applicant bears the burden of showing that there are no *de jure* or legal constraints that limit or prevent access of the U.S. satellite system in the relevant foreign markets. The exhibit required by this paragraph must also include a statement of why grant of the application is in the public interest. This paragraph shall not apply with respect to requests for authority to operate using a non-U.S. licensed satellite that is licensed by or seeking a license from a country that is a member of the World Trade Organization for services covered under the World Trade Organization Basic Telecommunications Agreement.

(b) Earth station applicants, or entities filing a "letter of intent," requesting authority to operate with a non-U.S. licensed space station must attach to their FCC Form 312 an exhibit providing legal, financial, and technical information for the non-U.S. licensed space station in accordance with Part 25 and Part 100 of this Chapter. If the non-U.S. licensed space station is in orbit and operating, the applicant need not include the financial information specified in Section 25.114(c)(17) and (c)(18). If the international coordination process for the non-U.S. licensed space station has been completed, the applicant need not include the technical information specified in Section 25.114(c)(5-11) and (c)(14), unless the technical characteristics differ from the characteristics established in that process.

(c) A non-U.S. licensed satellite system seeking to serve the United States can be considered contemporaneously with other U.S. satellite systems if it is (i) in orbit and operating; (ii) has a license from another administration; or (iii) has been submitted for coordination to the International Telecommunication Union.

APPENDIX C

Proposed Amendments to Form 312

Question 17

Add the following items to the classifications in question 17b:

- b8. Application for License of New Receive Only Station Using Non-U.S. Licensed Satellite
- b9. Letter of Intent to Use Non-U.S. Licensed Satellite to Provide Service in the United States
- b10. Other (Please Specify): _____

Question 20

Add the following items to the categories in question 20:

- () e. Direct to Home Satellite
- () f. Other (Please Specify) _____

Add the following questions to Form 312:

Question 41

41a. Does the applicant intend to use a non-U.S. licensed satellite to provide service in the United States? _____ Yes _____ No. If yes, answer 41b and attach Exhibit F providing the information specified in 47 C.F.R. § 25.137(b). If no, proceed to question 42.

41b. What administration has licensed or is in the process of licensing the space station? If no license will be issued, what administration has coordinated or is in the process of coordinating the space station? _____

**SEPARATE STATEMENT OF
COMMISSIONER RACHELLE B. CHONG**

Re: Amendment of the Commission's Regulatory Policies to Allow Non-U.S.-Licensed Space Stations to Provide Domestic and International Satellite Service in the United States (DISCO II), IB Doc. 96-111; CC. Doc. No. 93-23; File No. ISP-92-007

I agree with my colleagues that we should issue this Further Notice of Proposed Rulemaking to seek comment on the potential impact of the World Trade Organization Agreement on our policies for authorizing access to the U.S. domestic market by non-U.S. licensed satellite systems. I write separately, however, to emphasize that it is not the goal of this proceeding to create unnecessary regulations or an overly restrictive framework for analyzing applications. Rather, we seek ways to foster a robust, competitive, world-wide market for satellite services. In my view, creating such a market is more likely to serve the public interest than intense regulatory scrutiny. Thus, I encourage commenters to examine the proposals discussed in this Notice carefully and suggest alternative approaches, if appropriate.